IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

WP(C).No. 23063 of 2004(U)

PETITIONERS:

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1. **MRS.ROSILY JOY, 45 YEARS,**
   W/O. LATE BALUMMEL JOY, BALUMMEL HOUSE, 50/450,
   MANIMALA CROSS ROAD, EDAPALLY, KOCHI-24.

2. **JOSEPH ROCK, AGED 40 YEARS,**
   S/O. LATE JOSEPH, BALUMMEL HOUSE,
   KANNAMALY P.O., KOCHI-8.

3. **B.P.JOSEPH, AGED 64 YEARS,**
   S/O. B.M.PETER, BALUMMEL HOUSE,
   KANNAMALY P.O., KOCHI-8.

4. **PETER CELESTINE, AGED 45 YEARS,**
   S/O. CELESTINE, BALUMMEL HOUSE, KANNAMALY P.O.,
   KOCHI-8.

5. **TIMMY CELESTINE, AGED 43 YEARS,**
   S/O. CELESTINE, BALUMMEL HOUSE,
   KANNAMALY P.O., KOCHI-8.

6. **DOMINIC CELESTINE, AGED 40 YEARS,**
   S/O. CELESTINE, BALUMMEL HOUSE,
   KANNAMALY P.O., KOCHI-8.

7. **JEO CELESTINE, AGED 38 YEARS,**
   S/O. CELESTINE, BALUMMEL HOUSE,
   KANNAMALY P.O., KOCHI-8.

8. **MRS.SIMMY CELESTINE, AGED 35 YEARS,**
   W/O. BABU, BALUMMEL HOUSE, KANNAMALY P.O.,
   KOCHI-8.

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9. PATRIK XAVIER, C/O. B.P.JOLLY,
AGED 22 YEARS, BALUMMEL HOUSE, 40/1164,
BANK ROAD, KALOOR, KOCHI-17.

10. PETER PINTOO (MINOR), AGED 13 YEARS,
REP.BY HIS MOTHER NEENA JOLLY, BALUMMEL HOUSE,
40/1164, BANK ROAD, KALOOR, KOCHI-17.

11. B.J.FRANCO S/O. B.M.JOSEPH,
AGED 70 YEARS, BALUMMEL HOUSE, OPP.CUSBA POLICE
STATION, CHITTOOR ROAD, KOCHI-18.

12. JOSEPH FRANCO S/O. B.J.FRANCO,
AGED 45 YEARS, BALUMMEL HOUSE, OPP.CUSBA POLICE
STATION, CHITTOOR ROAD, KOCHI-18.

13. ALEX FRANCO S/O. B.J.FRANCO,
AGED 36 YEARS, BALUMMEL HOUSE, OPP.CUSBA POLICE
STATION, CHITTOOR ROAD, KOCHI-18.

14. B.J.MATHEW S/O. B.M.JOSEPH,
AGED 6 YEARS, BALUMMEL HOUSE, CHITTOOR ROAD,
KOCHI-18.

15. JOSEPH MATHEW S/O. B.J.MATHEW,
AGED 34 YEARS, BALUMMEL HOUSE, CHITTOOR ROAD,
KOCHI-18.

16. THOMAS MATHEW S/O. MATHEW,
AGED 31 YERS, BALUMMEL HOUSE, CHITTOOR ROAD,
KOCHI-18.

17. MANU MATHEW S/O. B.J.MATHEW,
AGED 29 YEARS, BALUMMEL HOUSE, CHITTOOR ROAD,
KOCHI-18.

18. EDWARD MATHEW S/O. B.J.MATHEW,
AGED 28 YEARS, BALUMMEL HOUSE, CHITTOOR ROAD,
KOCHI-18.

19. B.J.ANTONY S/O. B.M.JOSEPH
AGED 56 YEARS, BALUMMEL HOUSE, KANNAMALY P.O.,
KOCHI-8.

20. JOSEPH ANTONY, S/O. B.J.ANTONY,
AGED 25 YEARS, REP.BY HIS POWER OF ATTORNEY
HOLDER B.J.ANTONY, BALUMMEL HOUSE,
KANNAMALY P.O., KOCHI-8.

21. APPU VIRGIL ANTONY (MINOR),
S/O. B.J.ANTONY, AGED 16 YEARS, REP.BY HIS
FATHER B.J.ANTONY, BALUMMEL HOUSE, KANNAMALY P.O.,
KOCHI-8.

22. B.M.EDWARD, AGED 84 YEARS,
S/O. B.MANIC ROCK, BALUMMEL HOUSE,
KANNAMALY P.O., KOCHI-8.

23. B.MANICK PRASAD, AGED 58 YEARS,
S/O. B.M.EDWARD, BALUMMEL HOUSE, KANNAMALY P.O.,
KOCHI-8.

24. JOSEPH EDWARD, AGED 49 YEARS,
S/O. B.M.EDWARD, BALUMMEL HOUSE, KANNAMALY P.O.,
KOCHI-8.

25. EVEREST EDWARD, AGED 47 YEARS
S/O. B.M.EDWARD, BALUMMEL HOUSE, KANNAMALY P.O.,
KOCHI-8.

26. TOMY EDWARD, AGED 44 YEARS,
S/O. B.M.EDWARD, BALUMMEL HOUSE,
KANNAMALY P.O., KOCHI-8.

27. MRS.DEEPA JOHN, W/O. JOHN LEEN,
AGED 36 YEARS, BALUMMEL HOUSE, KANNAMALY P.O.,
KOCHI-8.

BY ADV. SRI.B.N.SHIVA SHANKER

RESPONDENTS:
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1. **KUMBALANGI GRAMA PANCHAYATH,**
   REP.BY ITS SPECIAL GRADE SECRETARY, KUMBALANGI.

2. **LINDA DOMINIC C/O. B.P.JOSEPH,**
   BALUMMEL HOUSE CELESTINE ROAD, KANNAMALY,
   KOCHI-8.

3. **MOHAN GEORGE C/O. JOSEPH ROCK,**
   BALUMMEL HOUSE, KANNAMALY P.O., KOCHI-8.

BY ADV. SRI.M.K.CHETTIAR for R1
SRI.K.MOHAN,SC,PANCHAYATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/07/2007 ALONG WITH OP NO. 26971 OF 2002, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:	**COPY OF THE PLAINT AND WRITTEN STATEMENT IN O.S.NO. 470/2003.**
EXT.P2:	**COPY OF THE INTERLOCUTORY APPLICATION COUNTER AFFIDAVIT AND REPLY AFFIDAVIT IN I.A.1957/2003 IN O.S.470/2003.**
EXT.P3:	**COPY OF THE ORDER IN I.A.1957/2003 PASSED BY THE MUNSIFF COURT, KOCHI.**
EXT.P4:	**COPY OF THE CIVIL MISCELLANEOUS APPEAL NO.24/04 FILED BY THE 1ST RESPONDENT BEFORE THE SUB COURT, KOCHI.**
EXT.P5:	**COPY OF THE AGREEMENT IS ENTERED INTO ON BEHALF OF THE PETITIONERS AND THE CONTRACTOR FOR THE YEAR 2003-2004 FOR FISHING IN PUTHENKARI PADASHEKHARAM OF 113 ACRES.**
EXT.P6:	**COPYOF THE IMPUGNED ORDER IN CMA 24/2003 PASSED BY THE SUB COURT,KOCHI.**
EXT.P7:	**COPY OF THE RESOLUTION OF THE PANCHAYATH COMMITTEE DTD. 21/05/96.**
EXT.P8:	**COPY OF THE APPLICATION FILED FOR DESPOSIT OF THE AMOUNT DIRECTED TO BE FIND BY THE SUB COURT, KOCHI IN CMA 24/04.**
EXT.P9:	**COPY OF THE PROCEEDINGS OF THE REVENUE DIVISIONAL OFFICER DTD. 28/06/96.**
EXT.P10:	**COPY OF THE PLAINT IN O.S.420/2002.**

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WPC.NO.23063/2004 U

EXT.P11: COPY OF THE JUDGMENT IN OS.75/98 PASSED BY THE MUNSIFF COURT, KOCHI.

EXT.P12: COPY OF THE REMITTANCE RECEIPT NO.59/29505 DTD. 9/11/2004 FOR RS.50,000/-.

EXT.P13: COPY OF THE AUCTION NOTICE NO.GE – 620/2005 DTD. 17/10/2005.

EXT.P14(A): COPY OF THE REMITTANCE RECEIPT NO.43773 DTD. 24/10/2005 FOR RS.88,200/-.

EXT.P14(B): COPY OF THE COVERING LETTER WHICH ACCOMPANIED THE CHEQUE ISSUED FOR REMITTANCE OF THE AFOREMENTIONED AMOUNT DTD. 24/10/2005.

/TRUE COPY/

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PIUS C. KURIAKOSE,J.

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W.P.(C) No.23063 of 2004

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Dated: 4th July, 2007

JUDGMENT

Ext.P6 order of the learned Subordinate Judge modifying Ext.P3 order allowing a C.M.Appeal filed by the respondents is under challenge in this Writ Petition under Article 227 of the Constitution.

2. Extensive arguments were addressed before me by Mr.B.N.Shiva Shanker, learned counsel for the petitioners and Mr.K.Mohan, counsel for the 1st respondent-Panchayat. I was taken through the various exhibits placed on record and particularly Ext.A15 interim order which was passed by this court in O.P.No.26971 of 2002 filed by the petitioners.

3. Strenuous and fervent submissions of Mr.Shiva Shanker, learned counsel for the petitioners notwithstanding, I am not inclined to hold that Ext.P6 is vitiated to the extent of warranting interference under the supervisory jurisdiction of this court under Article 227 of the Constitution which is expected to be invoked only in exceptional circumstances. Neverthless noticing some merit in his submission that the sum of Rs.80,000/- was fixed by the learned Subordinate Judge as payable to the respondent for securing fishing rights every year without any cogent materials and that Ext.A15 was only an interim

order which could not have been relied on for the purpose of fastening heavy peculiar liability on the petitioners, I virtually reduced the amount to Rs.60,000/- while passing interim order in this Writ Petition on 4.4.2007. Under the above circumstances, repelling the challenge against Ext.P6, the Writ Petition will stand disposed of by issuing the following directions:

Till lsuch time as suit O.S.No.470/03 is disposed of, the plaintiff will be an obligation to deposit a sum of Rs.60,000/- as against the sum of Rs.80,000/- directed under Ext.P6. The learned Munsiff will issue appropriate directions to the Advocate Commissioner and the Surveyor who have been appointed for conducting measurement of the properties and thereby ensure that the Advocate Commissioner and the Surveyor submits their report and plan at the earliest and at any rate within three months of receiving copy of the judgment. Once the Commissioner's report and the Surveyor's plan are received as directed, the learned Munsiff will special list the suit for trial in the earliest available special list and ensure that the suit itself is disposed of at the earliest and at any rate within two months of receiving copy of the report and plan. Till such time as the suit is disposed of, the interim arrangement stipulated in Ext.P6 as modified by this

judgment will continue. It is made clear that this court has not considered the merits of the rival contentions of the parties. The disposal of the suit by the learned Munsiff shall be on the basis of the evidence which comes on record and the court will not be unduly influenced by the observations and the apparent findings in Exts.P3 and P6.

srd **PIUS C.KURIAKOSE, JUDGE**